**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

INTELLECTUAL VENTURES II LLC,	)	
	)	**8:13CV167**
Plaintiff,	)	
	)	
V.	)	
	)	**ORDER**
FIRST NATIONAL BANK OF OMAHA,	)	
	)	
Defendant.		

This matter is before the Court on Defendant's Motion to Adjourn Markman Hearing (filing 56) and Motion to Stay Pending *Inter Partes* Review of the Patents-in-Suit (filing 59). Defendant's motions will be granted.

This case, which was instituted on May 29, 2013, involves claims of patent infringement for five patents. Between April 7, 2014, and April 23, 2014, *inter partes* review ("IPR") petitions were filed in the United States Patent and Trademark Office ("USPTO") against four of the five patents-in-suit. These petitions were filed by non-party International Business Machines Corporation ("IBM"), and seek cancellation of all claims for each of the four patents, which are presently asserted against Defendant in this case. Previously, IBM filed an IPR petition for the remaining patent-in-suit involved in this case, which sought to invalidate all claims of that patent. On April 16, 2014, the Patent Trial and Appeal Board ("PTAB"), a unit of the USPTO, issued a decision instituting an IPR proceeding to review the patentability of all claims of that patent. Therefore, all claims asserted against Defendant for each of the five patents-in-suit are either the subject of a pending IPR petition or an IPR proceeding. Moreover, Defendant anticipates that it will be filing its own IPR petitions in the next few weeks.

"A district court possesses the power to stay proceedings incidental to the power inherent in every court to control its docket." *Phil-Insul Corp. v. Airlite Plastics, Inc.*, No. 8:12CV151, 2012 WL 5193814, *2 (D. Neb. Oct. 18, 2012) (quoting *VData, LLC v. Aetna,* *Inc.*, Civil No. 06-1701, 2006 WL 3392889, *4 (D. Minn. Nov. 21, 2006)). "Therefore, the decision to grant or deny a stay pending the outcome of a PTO proceeding rests with the sound discretion of the Court." *Id*. "However, courts have adopted a liberal policy in favor of granting motions to stay proceedings pending the outcome of reexamination proceedings." *Id*.

After carefully reviewing the matter, the Court finds that a stay is warranted at this time. Although the parties have engaged in some discovery, a trial date has not been set and a Markman hearing, although scheduled and briefed, has yet to occur. Moreover, staying this case has the potential to simplify the issues in question as the outcome of IPR proceedings could, at the very least, "facilitate trial by providing the court with expert opinion of the USPTO and clarifying the scope of the claims." *Semiconductor Energy Lab. Co. v. Chimei Innolux Corp.*, No. 8:12-cv-21, 2012 WL 7170593, *2 (C.D. Cal. Dec. 19, 2012) (quotation omitted). *See also* *Brixham Solutions, Ltd. v. Juniper Networks, Inc.*, No. 13-cv-00616, 2014 WL 1677991, *1 (N.D. Cal. Apr. 28, 2014) (stating that "it is likely that a stay will simplify the issues . . . because the vast majority of requests for *inter partes* review are accepted and in virtually all of the cases in which final written decisions have been issued, the PTO has cancelled some or all of the challenged claims"). Plaintiff will not be unduly prejudiced by a stay. Plaintiff and Defendant are not competitors and there is no indication that a stay would place Plaintiff at a tactical disadvantage. *See also* *E-Watch, Inv. v. Lorex Canada, Inc.*, No. H-12-3314, 2013 WL 5425298, *2 (S.D. Tex. Sept. 26, 2013) ("[T]he mere fact of a delay alone does not constitute prejudice sufficient to deny a request for stay"). To the contrary, staying this litigation has the potential to conserve the resources of each party, in addition to the resources of the Court through, among other things, the postponement of a two-day Markman hearing.

Accordingly,

IT IS ORDERED:

1. Defendant's Motion to Adjourn Markman Hearing (filing 56) is granted. The Markman hearing is hereby continued until further notice.

2. Defendant's Motion to Stay Pending *Inter Partes* Review of the Patents-in-Suit (filing 59) is granted. This litigation shall remain stayed until the PTAB reaches a decision regarding whether to institute IPR proceedings based upon each of the petitions for review, including those which Defendant intends to file in the next couple of weeks. The parties shall file a joint report advising the Court of the PTAB's decisions and the parties' respective positions as to further proceedings in this case within ten (10) days of the PTAB's decision on the last of the petitions for review.

DATED May 6, 2014.

BY THE COURT:

S/ F.A. Gossett
United States Magistrate Judge